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October 28, 2024

**VIA ECF**

Magistrate Judge Peggy Kuo  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *State Farm Mut. v. Metro Pain*, 1:21-cv-05523 – Motion for Order to Show Cause**

Dear Judge Kuo:

Plaintiffs State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (together, “Plaintiffs”) respectfully write in follow up to this Court’s October 1, 2024 Order (the “Order”) compelling third-party Michael Torres (“Torres”) to serve written responses and produce all documents responsive to Plaintiffs no later than October 18, 2024. Plaintiffs mailed a copy of the Order to Torres, which was delivered on October 2, 2024. *See* Dkt. 621. The ordered deadline has since passed, no responses were received, and Plaintiffs have not been contacted by Torres. As Torres is expected to have relevant documents, has not objected or otherwise responded to the subpoena, and has violated the Order, Plaintiffs respectfully request this Court order Torres to appear before the Court and show cause for why he should not be held in contempt for his failure to comply with both the subpoena and the Order.

Torres is likely to possess documents responsive to the subpoena. In relevant part, the Second Amended Complaint alleges defendants conspired to submit fraudulent bills to insurance carriers for healthcare services provided to automobile accident victims. Patients covered under no-fault auto policies were a necessary component of the scheme, and defendants illegally obtained patients from numerous sources, including defendant Beshert Corp. Beshert purported to be an “advertising” and “marketing” company, but it functioned as a referral network among no-fault providers and attorneys. Torres worked as a marketer for Beshert, as well as defendant Citimed Management Services Inc. Among the documents Plaintiffs seek from Torres are emails relating to his work with these defendants, including emails sent through an account associated with Beshert, torres.beshert@gmail.com. Beshert’s owner, defendant Reuven Alon, has certified he does not have access to this account. However, documents obtained from Google in this action confirm the account is active and contains communications with defendants and other unnamed co-conspirators.

An order requiring Torres to show cause is appropriate because he failed to comply with a subpoena duly served under Rule 45 and the Order compelling his compliance with that subpoena. *See, e.g.*, Dkt. 615 at 1. Rule 45 authorizes subpoenas to be issued to non-parties directing them

to produce designated documents in that person's possession, custody, or control. *See* Fed. R. Civ. P. 45(a)(1)(A)-(B). Rule 45 grants the Court power to hold a party in contempt "simply on the basis of failure to comply with a subpoena." *PainWebber Inc. v. Acstar Ins. Co.*, 211 F.R.D. 247, 249 (S.D.N.Y. 2022). Here, Torres was ordered to respond to the subpoena on or before October 18, 2024. To date, he has not produced any documents or otherwise responded to the subpoena, and he is in violation of the Order. An order requiring Torres to appear before the Court and show cause why he should not be held in contempt for failing to comply with the subpoena and the Order is thus appropriate. *See* Fed. R. Civ. Pro. 45(e) ("The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena."); *Leser v. U.S. Bank Nat. Ass'n*, 2011 WL 1004708, at \*1 (E.D.N.Y. 2011) (finding non-party in contempt for failure to comply with subpoena, and subsequently failing to appear at show cause hearing).

Accordingly, Plaintiffs respectfully request this Court issue an order directing Torres to appear before the Court and show cause why he should not be held in contempt for failing to comply with the subpoena served upon him.

Respectfully submitted,

/s/ Christopher T. Cook

Christopher T. Cook

cc: Michael Torres (via FedEx Overnight)